

Montana Codes Annotated 2005 – Sheriff's Office Policy

71-3-1201. Who may have lien -- agisters' lien -- lien for service -- towing and storage lien.

(1) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock or for providing a service listed in subsection (1)(b) and may retain possession of the stock until the sum due is paid.

(b) If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock provided for in this subsection (1), a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on it. The lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage.

71-3-1202. Priority. (1) Subject to subsection (4), the lien created may not take precedence over perfected security interests under the Uniform Commercial Code--Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of receiving the property, the person desiring to assert a lien upon the property gives notice in writing to the secured party or other lienholder, stating the intention to assert a lien on the property, under the terms of this part, and stating the nature and approximate amount of the work performed or feed or other services furnished or intended to be performed or furnished.

(2) Service may be made either by personal service or by mailing by registered or certified mail a copy of the notice to the secured party or other lienholder at the last-known post-office address. Service must be considered complete upon the deposit of the notice in the post office.

(3) Within 20 days after the date of mailing or 10 days after personal service, the secured party or other lienholder or the secured party's or other lienholder's representative has the right to take possession of the property upon payment of

the amount of the lien. A failure on the part of the secured party or other lienholder to take possession of the property constitutes a waiver of the priority of the security interest or other lien over the lien created by this part.

(4) With regard to a reproductive technology business, the lien created may not take precedence over perfected security interests under the Uniform Commercial Code--Secured Transactions or other recorded liens on the embryos or semen involved unless, within 30 days from the time of harvesting or collecting the embryos or semen, the person desiring to assert a lien upon the embryos or semen gives notice in writing to the secured party or other lienholder stating the intention to assert a lien on the embryos or semen under the terms of this part and stating the nature and approximate amount of the work performed or other services furnished or intended to be performed or furnished.

71-3-1203. Enforcement of lien -- sale. If payment for such work, labor, feed, or services or material furnished is not made within 30 days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this part may enforce said lien in the following manner:

(1) He shall deliver to the sheriff or a constable of the county in which the property is located an affidavit of the amount of his claim against said property, a description of the property, and the name of the owner thereof or of the person at whose request the work, labor, or services were performed or the materials furnished.

(2) Upon receipt of such affidavit, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same.

(3) Such sale shall be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(4) Before the sheriff or constable sells the property at public auction, he shall give notice of the sale to the owner or person at whose request the work, labor, or services were performed or the materials furnished.

(a) Notice to the owner must be given at least 10 days before the sale.

(b) The notice must state:

(i) the time and place of the sale;

(ii) the amount of the claim against the property;

(iii) a description of the property;

(iv) the name of the owner or person who contracted for the services or materials; and

(v) the name of the person claiming the lien.

(c) The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last-known post office address of the owner or person who contracted for the services or materials.

(d) If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or person who contracted for the services or materials are unknown, the sheriff or constable

may give notice by posting notice of the sale in three public places in the county in which the property is located.

(5) The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property.

(6) However, before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor that may not exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff.

71-3-1204. Lien not lost by fraudulent taking of property. The lien created by this part shall not be lost by reason of any forcible or fraudulent taking of the property from the possession of the person entitled to said lien, but in all such cases the person entitled to such lien shall be entitled to recover possession of the property by proper action instituted in court against any person in whose possession the property may be found.